ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of:	)	
	)	
Deployment of Wireline Services Offering	)	
Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act of 1996	)	

REPLY COMMENTS OF RHYTHMS NETCONNECTIONS INC.

Jeffrey Blumenfeld
Chief Legal Officer, General Counsel
Frank Paganelli
RHYTHMS NETCONNECTIONS INC.
9100 E. Mineral Circle
Englewood, CO 80112
303.476.4200
303.476.5700 fax
jeffb@rhythms.net
fpaganelli@rhythms.net

Christy C. Kunin
Kristin L. Smith
Elizabeth R. Braman
BLUMENFELD & COHEN–TECHNOLOGY LAW GROUP
1625 Massachusetts Avenue, Suite 300
Washington, D.C. 20036
202.955.6300
202.955.6460 fax
christy@technologylaw.com
kristin@technologylaw.com
elizabeth@technologylaw.com

Counsel for Rhythms NetConnections Inc.

Dated: November 14, 2000

SUMMARY

The record in this proceeding supports adoption of the definition of "necessary" proposed by Rhythms in its initial comments. The appropriate definition will enable the efficient and effective competition envisioned by the Telecommunications Act by allowing CLECs to collocate equipment directly related to interconnection or UNE access. Furthermore, the record demonstrates that the ILEC suggestion that the D.C. Circuit already gave substance to this ambiguous statute does not withstand scrutiny. Accordingly, the Commission should conclude that ILECs must permit physical collocation of equipment so long as it is "directly related to" interconnection and access to unbundled elements and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently.

The record also supports a Commission determination that multiuse equipment, carrier-to-carrier cross-connects, and digital loop carrier line cards are equipment necessary for interconnection and access to unbundled elements, and thus that CLECs should be permitted to collocate this equipment on the ILEC premises, including the remote terminals. By adopting a presumption that CLEC equipment is appropriate for collocation, the Commission can best balance the competing interests of ILECs and CLECs. Indeed, the Commission should implement rules that expressly provide for collocation of multiuse equipment, carrier-to-carrier cross-connects and DLC line cards, as well as ensure that CLECs can continue to collocate the equipment necessary to efficiently and effectively provide advanced services to consumers.

The Commission also has strong record of support for adopting rules to ensure that as ILEC networks evolve they continue to be open to competition by facilities-based carriers and are not remonopolized by incumbents. Therefore, the Commission should confirm and reiterate that its existing unbundling rules apply as network technologies, including next generation

digital loop carriers systems, are deployed in the ILEC loop plant. In reaching its decision, the Commission must disregard ILEC threats to take their ball and go home. There is simply no support for these threats.

Finally, the record also provides broad support for the conclusion that ILEC resale of broadband service offerings, such as SBC's service offering, do not satisfy the ILECs' unbundling obligations in an NGDLC network. Consequently, the Commission should require ILECs to provide broadband UNEs from the central office to CLECs precluded from placing its own line card in an NGDLC remote terminal.

Rhythms therefore requests that the Commission adopt the specific conclusions set forth in the Conclusion to these reply comments and modify its rules in accord with the attached Rules Appendix.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of:	)	
	)	
Deployment of Wireline Services Offering	)	
Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act of 1996	)	

REPLY COMMENTS OF RHYTHMS NETCONNECTIONS INC.

Rhythms NetConnections Inc. ("Rhythms") files these reply comments in response to comments filed on the Commission's Notices of Proposed Rulemakings.[1]

DISCUSSION

I. THE COMMISSION MUST ESTABLISH A LEGAL STANDARD OF "NECESSARY" THAT WILL ALLOW THE COMPETITION CONTEMPLATED IN THE ACT.

A. THE APPROPRIATE LEGAL DEFINITION OF "NECESSARY" MUST COMPORT WITH THE STATUTORY GOALS AND REQUIREMENTS.

In its opening comments, Rhythms proposed the following legal standard for determining what competitive local exchange carrier ("CLEC") equipment could be collocated on incumbent local exchange carrier ("ILEC") premise: Equipment is "necessary" so long as it is "directly

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297 (rel. Aug. 10, 2000).

related to" interconnection and access to unbundled elements and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently.[2]

This legal standard is consistent with the comments of the vast majority of commenters, including Qwest, because it incorporates the language of the D.C. Circuit to permit statutorily required collocation of equipment containing functions that enable CLECs to compete effectively and efficiently. In this way, Rhythms' proposed definition ensures that the goals of the Act can be accomplished and is also consistent with the definitions proposed by other CLEC commenters and with Qwest's position.

The legal standard implements the specific language in the D.C. Circuit opinion in *GTE v. FCC*[3] by requiring that any equipment placed in the collocation space be "directly related" to interconnection or access to unbundled network elements ("UNEs").[4] Several other commenters also urged the Commission to use the "directly related" language of *GTE v. FCC*. For example, NorthPoint urges the Commission to define "necessary" as "any equipment that is directly related to interconnection or access to unbundled network elements" based upon the "court's direction."[5]

Perhaps most importantly, Rhythms' proposed standard ensures that CLECs will be able to provide their services effectively and efficiently, an objective that Qwest and others admit that Rhythms' standard must promote.[6] A repeated theme in parties' comments in this proceeding was to ensure that CLECs had the ability to efficiently and effectively collocate. For example,

---

[2] Rhythms Comments at 1, 4.

[3] *GTE v. FCC*, 205 F.3d 416, 424 (D.C. Cir. 2000) (No. 99-1176).

[4] *Id.*

[5] NorthPoint Comments at 4.

[6] Rhythms Comments at 1, 4.

Qwest states that "if significant efficiencies can be obtained in using equipment at a collocated site which would not be available elsewhere, and the equipment is actually used for interconnection or access to network elements, then it would seem to meet the 'necessary' test." [7] Qwest concludes that "there is no reason to limit or prohibit other functionalities which the equipment can efficiently and profitably perform."[8]

Rhythms' proposed "necessary" standard is also consistent with settled rules of statutory construction and legal precedent.[9] The legal precedents clearly illustrate, as Rhythms demonstrated in its opening comments, that the Commission cannot and must not adopt a statutory interpretation that undermines the goals and purposes of the Act.[10] As Rhythms demonstrated in its comments, under settled rules of statutory construction, the Commission must interpret language so as to accomplish the statutory purpose and further the public interest.[11] Where there is an issue of a regulatory taking—which is not in this instance—the case law holds that the Commission has latitude to construe statutory terms broadly if appropriate to effectuate the statutory goal. Thus, contrary to the protestations of some ILECs,[12] there is no significant danger of an unconstitutional takings of property. Indeed, there is a long history of,

---

[7] Qwest Comments at 3-4.

[8] Qwest Comments at 5.

[9] Rhythms Comments at 3-4; *see also* Joint Commenters Comments at 10-11.

[10] Rhythms Comments at 8; *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 467 U.S. 837, 837 (1984), (The Court held that the Department of the Interior's interpretation of the term "harm" was supported by an ordinary understanding of word and the broad purpose of ESA to protect endangered and threatened wildlife. Thus, the provision authorizing the issuance of permits for otherwise prohibited takings which are incidental to otherwise lawful activities, and the legislative history established Congress' intent that "take" apply broadly to cover indirect as well as purposeful actions.).

[11] Rhythms Comments at 3.

[12] SBC Comments at 12; Verizon Comments at 3, 40.

and clear judicial precedent for, agency "takings" of property that will be used by third parties, such as in eminent domain or condemnation proceedings.[13]

A simple hypothetical illustrates this point. When a government, perhaps for example the state of New Jersey, plans construction of a multi-lane highway, such as the New Jersey Turnpike, in all likelihood, land that will be paved for the highway is obtained at least in part from private property owners. Those property owners must relinquish their property, in exchange for just compensation, in order for the state to build the highway.

The property acquired for construction of the turnpike, however, is not used solely for the roadway. Rather, the government also permits ancillary uses of the property that are directly related to the purpose for which the property was acquired. So, for instance, the property is used by third parties, such as gas stations, mini-markets and fast food vendors, to provide services that are "directly related" to the use of the highway. From the consumer standpoint, even though these services are not the actual roadway, they are directly related to use of the roadway and therefore "necessary".

The hypothetical also demonstrates that the "directly related" test imposes some limit on the use of the government-acquired land. Specifically, use of the property is limited to services that are "directly related" to consumer's use of the highway, such as the gas, food, bathrooms, and rest areas on the New Jersey Turnpike. Unrelated land uses—department stores, electronic stores, etc.—are accessible only by exiting the turnpike.

Finally, the example illustrates why permitting the ancillary, directly-related services will lead to more efficient and effective use of the turnpike. If the services were not available, then

---

[13] *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 229 (1984); *Boston and Maine Corp. v. I.C.C.*, 911 F.2d 743, 752 (D.C.Cir. 1990) ("The Supreme Court has approved takings of private property for reconveyance to third parties when such transfers were central to the public interest at stake.").

travelers would have to exit, pay a toll, find a service provider and then re-enter the turnpike. Not only is the inefficiency of such an arrangement obvious from the consumer's perspective, but several administrative inefficiencies are also apparent. There would be much greater traffic entering and exiting the toll-road. Travelers may not even be able to find the services they need at the exit they select. All in all, the service rendered to the traveler by the turnpike would be considerably less satisfactory. And in the final analysis, the turnpike becomes much less useful to the consumers—the public interest— that justified its construction.

B. ILEC ARGUMENTS THAT THE D.C. CIRCUIT ESTABLISHED THE DEFINITION OF NECESSARY ARE WRONG.

The Commission must set the appropriate standard. It was not set by the court as the ILECs assert in their comments.[14] The court did not and cannot give substance to an ambiguous statute.[15] Accordingly, the Commission must disregard the ILEC submissions suggesting that the Commission has no authority to interpret the statutory language.

The D.C. Circuit did not determine the appropriate statutory definition, nor could it under settled principles of law. First, as is clear from the language of the opinion, the D.C. Circuit articulated the *outer* bound of the definition of "necessary."[16] The Court makes clear that the Commission "must operate within the limits of 'the ordinary and fair meaning of [the statute's] terms.'"[17] This decision appropriately leaves the Commission to discharge its statutory role of interpreting the statute consistent with Congressional goals. Indeed, by remanding—rather than

---

[14] BellSouth Comments at 3; SBC Comments at 8; USTA Comments at 4; Verizon Comments at 2-3.

[15] *Michigan Dept. of Environmental Quality v. Browner*, 2000 WL 1505083 *1 (6th Cir. 2000). ("In reviewing agency's interpretation of statute, Court of Appeals is not to substitute its judgment for that of the agency, but rather shows great deference to the statutory interpretation given by the agency and the officers charged with the statute's administration.").

[16] 205 F.3d at 424.

[17] 205 F.3d at. 424, *citing AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 390, 119 S.Ct. 721 (1999).

rewriting—the Commission's rule, the decision contemplates, and indeed requires, further action to implement the language of Section 251(c)(6).[18] Thus, contrary to the conclusions reached by some of the ILECs, the D.C. Circuit did not define "necessary"; rather the court left it to the Commission to craft a definition and articulate the record basis for a definition.[19] The court, "demand[ed] a better explanation from the FCC" because of its determination that "the current rules under the Collocation Order make no sense in light of what the statute itself says."[20]

Second, the statute clearly gives the FCC authority to set the standard for collocation.[21] As numerous parties correctly observed, the Commission, not the courts, interprets the language of an ambiguous statute.[22] As Rhythms argued, "the word 'necessary' is sufficiently ambiguous to invoke *Chevron* deference by the courts, but in order to be accorded such deference, the statutory term must be interpreted reasonably by the Commission."[23]

---

[18] 205 F.3d at 424; *Camp v. Pitts,* 411 U.S. 138, 143 (1973) (If the agency action, once explained by the proper agency official, is not sustainable on the record itself, the proper judicial approach has been to vacate the action and to remand the matter back to the agency for further consideration.); *Overton Park v. Volpe*, 401 U.S. 402, 415 (1971) ("de novo review is authorized when the action is adjudicatory in nature and the agency fact-finding procedures are inadequate"); *Environmental Defense Fund, Inc. v. Costle*, 657 F.2d 275, 286 (D.C.Cir. 1981); *Asarco, Inc. v. U.S.E.P.A.*, 616 F.2d 1153, 1158 (9th Cir. 1980); *see* 5 U.S.C. § 706 ("To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—(1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions.").

[19] 205 F.3d at 424.

[20] 205 F.3d at 424.

[21] 47 U.S.C. 251(d); Rhythms Comments at 4; Conectiv Comments at 16; CTSI Comments at 4; DSLNet Comments at 24; Fiber Technologies Comments at 4; Corecomm Comments at 18-19; Mpower Comments at 3; PF.Net Comments at 5; Telergy Comments at 6, 17.

[22] Rhythms Comments at 3; 467 U.S. at 837 ("if statute is silent or ambiguous with respect to specific issue, question for court is whether agency's answer is based on permissible construction of statute."); AT&T Comments at 9; Joint Commenters Comments at 18-20.

[23] Rhythms Comments at 3.

Third, the definition of "necessary" as "indispensable" that some ILECs urged would undermine the statutory purpose and render certain statutory provisions inoperable.[24] Rhythms noted that the Courts have not required "necessary" to mean "indispensable" "where such a reading would be too rigid for a word that should 'be harmonized with its context.'"[25] Several of the commenters agree that the Commission should reject that any attempt to equate "necessary" with "indispensable."[26]

Finally, even the D.C. Circuit's concern with "takings"—a concern not addressed, let alone endorsed, by any regulatory body or court—does not transfer to the judiciary the right to make a judgment delegated to the agency by statute.[27] In its opinion, the court twice mentioned "takings" concerns associated with the Commission's definition of "necessary."[28] Even assuming these concerns are legitimate, they do not provide the basis for concluding that the court can or should define the terms of the statute. For instance, the United States Supreme Court has long held that in condemnation proceedings regarding acquisition of full title to real property, the question of "necessity" or similar findings was for the agency and was not within

---

[24] BellSouth Comments at 3; SBC Comments at 14; USTA Comments at 4; Verizon Comments at 4.

[25] Rhythms Comments at 8.

[26] CTSI Comments at 9; Mpower Comments at 14; Telergy Comments at 13.

[27] 205 F.3d at 419.

[28] 205 F.3d at 421, 426 ("the FCC's interpretations of 'necessary' and 'physical collocation' appear to diverge from any realistic meaning of the statute, because the Commission has favored the LECs' competitors in ways that exceed what is 'necessary' to achieve reasonable "physical collocation" and in ways that may result in unnecessary takings of LEC property.").

the province of the courts.[29] In *Bergman v. Parker*, the Supreme Court held that "if the Agency considers [condemnation] necessary . . .it may do so"—"it is not for the courts to determine."[30] Thus, even if there were a serious question about "takings" (which has not been shown here) "for the courts to substitute their . . . discretion for that of the Commission is incompatible with the orderly functioning of the process of judicial review."[31]

The role of the reviewing court is purposefully and carefully bounded to ensure that judges do not overreach their authority.[32] These rules exist to prevent the precise kind of judicial intrusion into an expert agency's process that the ILECs now urge this Commission to accept. The court, referenced one possible meaning of the word "necessary,"[33] but only as a starting point. The court went on to state that the Commission would and should articulate a definition beyond that initial articulation.[34] Accepting the court's preliminary definition as the final word on the meaning of the statute however, would not only be irresponsible, but arbitrary and capricious. This Commission, therefore, must consider its own record created in this proceeding and fulfill its duty under the Act to determine a workable definition for the term "necessary".

---

[29] *Berman v. Parker*, 348 U.S. 26, 35, (1954); *Sears v. Akron*, 246 U.S. 242, 248 (1918); *see also United States Tennessee Valley Auth. v. Two Tracks of Land Containing 146.4 Acres*, 532 F.2d 1083, 1084 (6th Cir. 1976) ("It is well settled that the necessity, expediency, location and extent of taking property for a public purpose are legislative and administrative questions and that the scope of judicial review is extremely narrow."); *Brest v. Jacksonville Expressway Authority*, 194 So. 2d 658, 660-662 (Fla. App. 1967) (a determination that a particular piece of property is needed for a public purpose that is made by an entity authorized by the legislature to make such a determination, and following the procedure required by the statute, will not be disturbed by the courts in the absence of fraud, or bad faith, or abuse of discretion); *U.S. v. Certain Lands of Raritan*, 144 F. Supp. 206, 206 (D.C.N.J. 1956).

[30] 348 U.S. at 36.

[31] *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 169 (1962).

[32] 467 U.S. at 844; *see Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 120 S.Ct. 1291, 1293 ("Deference under *Chevron* to an agency's construction of a statute that it administers is premised on the theory that a statute's ambiguity constitutes an implicit delegation from Congress to the agency to fill in the statutory gaps.").

[33] 205 F.3d at 422.

[34] 205 F.3d at 424.

II. THE RECORD ESTABLISHES THAT THE APPROPRIATE "NECESSARY" STANDARD ENABLES CLECS TO COLLOCATE THE EQUIPMENT THEY NEED TO COMPETE EFFECTIVELY AND EFFICIENTLY.

A. THE RECORD SUPPORTS CLECS' ABILITY TO COLLOCATE EQUIPMENT WITH MULTIPLE FUNCTIONS THAT IS NECESSARY FOR INTERCONNECTION OR UNE ACCESS.

1. The Commission's Rule Must Focus on the Functions Necessary for Interconnection and UNE Access.

There is broad support in the record for a rule that permits carriers to collocate equipment that has functions necessary for interconnection and access to UNEs.[35] As Rhythms explained in its comments, once a function is deemed necessary, CLECs must be permitted to collocate equipment with the necessary function that is currently available in the market.[36] This Commission cannot and should not craft a rule that will result in CLECs being forced to custom design equipment at substantial delay and cost.[37]

Similarly, according to the weight of the record, CLECs should not be required to disable functions on multiuse equipment.[38] When a CLEC buys the same multifunction equipment as the ILEC, but is permitted to use only one function, in effect the CLEC pays significantly more for the function it uses than the ILECs pays for the same function.[39] In addition, the CLEC must

---

[35] Rhythms Comments at 12-13; @Link Comments at 15; ATG Comments at 3; AT&T Comments at 9-10; CompTel Comments at 1; Conectiv Comments at 2; CoreComm Comments at 2; Covad Comments at 12; CTSI Comments at 4; DSLNet Comments at 29; Fiber Technologies Comments at 3-4; GSA Comments at 4; IntraSpan Comments at 6; Joint Commenters Comments at 11; McLeodUSA Comments at 2; NorthPoint Comments at 3; PFNet Comments at 5; RCN Comments at 10; Sprint Comments at 5; Supra Comments at 4-5; Telergy Comments at 10; WorldCom Comments at 3.

[36] Rhythms Comments at 13-17; *see also* Conectiv Comments at 12; CTSI Comments at 12; DSLNet Comments at 29.

[37] *See, e.g.,* Cisco Comments at 2; Qwest Comments at 9; Covad Comments at 19.

[38] Rhythms Comments at 16; Qwest Comments at 9-10; *see* Telergy Comments at 31.

[39] Rhythms Comments at 16; Qwest Comments at 9; WorldCom Comments at 8.

purchase duplicate equipment to perform the disabled functionalities and locate it elsewhere.[40] The ILEC has no corresponding cost.[41] As a result, the CLEC's total expenditure for the same set of functions is clearly much higher than the ILEC's costs, completely contrary to the requirements of the Act.[42]

If the Commission held otherwise, as numerous commenters point out, CLECs would be unable to efficiently interconnect or access UNEs as required by the Act.[43] Qwest notes that "if CLECs were prohibited from collocating and fully utilizing such [multifunctional] equipment" CLECs would be put "at a needless competitive disadvantage to the incumbent LEC."[44] Thus, the record does not support limiting CLEC collocation of multiuse equipment.

2. *CLECs Have Powerful Incentives to Limit the Amount of Equipment Collocated at the ILEC Premises.*

An underlying assumption of the ILEC comments is that CLECs will abuse the right to collocate equipment permitted by the Act and this Commission's rules by placing as much equipment as possible at the ILEC premises.[45] Yet, the reality is that CLECs have the opposite motivations. As explained below, the cost of and constraints on use of ILEC collocation space give CLECs the incentive to minimize the amount of space they occupy in the ILEC premises.[46]

Given these costs and constraints of collocation, CLECs will rationally seek to limit what they collocate to only that equipment that has functions necessary to perform at the ILEC

---

[40] Rhythms Comments at 16; Qwest Comments at 10; WorldCom Comments at 9.

[41] Rhythms Comments at 16; WorldCom Comments at 9.

[42] Rhythms Comments at 16; Qwest Comments at 11; Focal Comments at 9-10.

[43] Rhythms Comments at 18; Comptel Comments at 4; Focal Comments at 10; Qwest Comments at 12-13.

[44] Qwest Comments at 13.

[45] BellSouth Comments at 4-5; SBC Comments at 28; USTA Comments at 4, 8; Verizon Comments at 2.

premises, *i.e.*, to efficiently and effectively interconnect or access UNEs, which is the sole reason for being at the ILEC premises. Although often necessary for interconnection or UNE access, ILEC collocation space is the least desirable to use from a CLEC standpoint. On a square-foot basis, collocation space is the most expensive place for CLECs to place their equipment. Cost is not the only reason CLECs will limit their use of ILEC space. CLEC access collocated equipment is limited by restrictive ILEC rules. The ability to change equipment is also constrained by some ILECs that insist on onerous approval processes and lengthy intervals.[47] These same onerous expenses, and time-consuming procedures frequently also apply even to adding ports of other cards to existing equipment. CLECs therefore have powerful incentives to minimize the equipment they place in the ILEC space. All of these factors reinforce CLECs' incentives to place only equipment that is actually "necessary."

Indeed, CLEC advocacy before state and federal regulators has emphasized their desire to limit the amount of space they are required to take. CLECs have sought and won the right to remove minimum space requirements imposed by the ILECs.[48] CLECs have sought, and won the right, to cageless collocation, which eliminates the space inefficiencies inherent in a caged arrangement.[49] CLECs sought and won the right to collocation on a rack-by-rack basis.[50] CLECs sought, won and continue to seek, the removal of segregated and isolated space requirements imposed by the ILECs.[51] Having won the right to take only the amount of space

---

[46] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999)("*Advanced Services Order*") ¶ 21, n. 32; Rhythms Joint Declaration at ¶ 15; Focal Comments at 10.

[47] Rhythms Comments at 65; Rhythms Joint Declaration at ¶¶ 14-15.

[48] *Advanced Services Order* ¶ 43.

[49] *Advanced Services Order* ¶ 42; 205 F.3d at 425.

[50] *Advanced Services Order* ¶ 43.

[51] *Advanced Services Order* ¶ 42.

they actually need, CLECs will likewise limit the equipment that they place at the ILEC premises to the equipment necessary for effective and efficient interconnection and UNE access.

3. *The Rules Should Contain a Rebuttable Presumption that CLEC Collocated Equipment Is Necessary.*

To recognize these incentives, the Commission can and should establish a presumption that a CLEC may collocate equipment it requests to collocate, and the ILECs must permit such equipment in the ILEC premises. ILECs would have the right to challenge the presumption, and would bear the burden of proof to demonstrate that the equipment is not directly related to interconnection or access to UNEs as required to compete effectively and efficiently. During the pendency of the challenge, CLECs can continue to collocate the equipment at issue. This makes sense from the consumer perspective, because the customer would not be "held hostage" during the regulatory challenge and could continue to obtain competitive services from the CLEC.

Moreover, if an ILEC prevails in its challenge, the CLEC will have to comply with the regulatory ruling, by removing its equipment from the ILEC premises. This clearly provides a strong deterrent to CLEC requests to collocate equipment that is not necessary. A CLEC that loses a challenge would have to disconnect customers, remove its equipment from the ILEC premises, relocate that equipment, and reconnect the equipment. Only then could the CLEC attempt to reconnect its customers. Those customers, however, may well have abandoned the CLEC in disgust during the relocation process. The loss of business and damage to the CLEC's reputation would not only be substantial, in all likelihood it would be irreparable.

The presumption also addresses the D.C. Circuit's concern that the collocation decision not be left solely in the hands of the CLEC.[52] Unlike the Commission's prior rule, this rule

[52] 205 F.3d at 426.

establishes a presumption, not an unassailable right. An ILEC may challenge placement of CLEC equipment if it (a) believes the functionality of the equipment is not directly related to interconnection or UNE access or (b) believes that an inability to collocate the equipment would not interfere with a CLEC's ability to compete effectively or efficiently.

B. THE COMMENTS SUPPORT CLECS' ABILITY TO COLLOCATE CARRIER-TO-CARRIER CROSS CONNECTS.

The record is clear. In response to the Commission's inquiry regarding whether or not CLECs should have the right to cross connect with other CLECs at the ILEC premises,[53] commenters have presented compelling evidence supporting a Commission conclusion that carrier-to-carrier cross-connects are necessary for interconnection or access to UNEs.[54] As Qwest concludes, "there is no reason to prohibit cross-connection between two pieces of CLEC equipment both lawfully on the premises."[55] Consequently, as Rhythms agrees with the commenting parties, including the Joint Commenters, that under the statutory framework the Commission can and must require ILECs to permit carrier-carrier cross-connects.[56]

As predicted in Rhythms' comments,[57] BellSouth, SBC and Verizon promote an overly restrictive reading of their Section 251 obligations by attempting to read Section 251(c)(6)

---

[53] *2nd NPRM* ¶ 88.

[54] Rhythms Comments at 28; Joint Commenters Comments at 43-50; AT&T Comments at 33; Conectiv Comments at 20; Corecomm Comments at 29-30; Covad Comments at 26-30; CTSI Comments at 16; DSLNet Comments at 38-39; Fiber Technologies Comments at 8-10; Focal Communications Comments at 14; Lightbonding Comments at 3, 5-7; Metromedia Comments at 20-21; Mpower Comments at 26; NorthPoint Comments at 14-17; RCN Comments at 15; Sprint Comments at 12; Telergy Comments at 32-33; WorldCom Comments at 11.

[55] Qwest Comments at 5.

[56] Rhythms Comments at 28-30; Joint Commenters Comments at 43-47; AT&T Comments at 32; Conectiv Comments at 20; Covad Comments at 30; Fiber Technologies Comments at 8-10; Focal Comments at 14; Lightbonding Comments at 5; Metromedia Comments at 20; NorthPoint Comments at 13.

[57] Rhythms Comments at 30.

without considering their obligations under Section 251(a)(1).[58] Section 251(a)(1) places upon all telecommunications carriers the statutory obligation "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[59] Coupled with the Section 251(c)(6) obligation of ILECs to provide for collocation of equipment necessary for interconnection or access to UNEs extend, carriers must be permitted to cross-connect either directly with the incumbent, or indirectly through other carriers. As Covad explains, "Congress did not intend to limit the ability of carriers to utilize their collocated equipment only for interconnection with the incumbent."[60] Congress meticulously crafted Section 251 to create a mechanism that will facilitate a thriving, competitive telecommunications marketplace. As WorldCom points out, the Internet industry provides a good example of how, in a competitive marketplace, the company providing the collocation space allows carriers to cross-connect.[61] The Commission, therefore, should recognize the interplay that exists between Section 251(c)(6) and Section 251(a)(1).[62]

Verizon's conclusion that carrier-to-carrier cross-connections are "never necessary, since there is *nothing unique* about the incumbent local exchange carrier's central office that prevents collocators from connecting to each other elsewhere,"[63] is belied by the fact that the ILEC premises are the one location where many carriers, ILECs and CLECs alike, have network

---

[58] SBC Comments at 25-26; Verizon Comments at 13; BellSouth Comments at 8.

[59] 47 U.S.C. § 251(a)(1).

[60] Covad Comments at 27-28.

[61] WorldCom Comments at 12.

[62] Rhythms Comments at 28-29; *see* Joint Commenters Comments at 53; Fiber Technologies Comments at 10; Metromedia Comments at 20.

[63] Verizon Comments at 13.

facilities and equipment.[64] Prohibiting carriers to cross-connect with other carriers directly within the ILEC premises requires additional facilities, additional costs, additional CLEC equipment, and additional distance, all causing competitive advanced services to be "unduly cumbersome and creat[ing] numerous potential points of failure."[65] It is also discriminatory, because it places the incumbent in the unique position of being able to cross-connect with all carriers in one location.[66]

Because Rhythms believes the Commission should require carrier-to-carrier cross-connects under the Telecommunications Act, Qwest is correct that all incumbents should allow carriers to cross-connect with other competitive carriers in the ILECs central offices.[67] Qwest acknowledges that a contrary ruling would be unreasonable.[68] An overwhelming majority of the comments provide evidence that carrier-to-carrier cross-connections at the ILEC premises are not only necessary for interconnection, they are also consistent with the purpose of the 1996 Act to promote the construction of competitive networks.[69] For these reasons, the Commission should require ILECs to allow CLECs to cross-connect with other collocators at their premises, to ensure all carriers the equal ability to construct efficient, competitive networks.

---

[64] Rhythms Comments at 31.

[65] WorldCom Comments at 11; *see* Covad Comments at 28; @Link Comments at 27; Conectiv Comments at 20; Focal Comments at 15-17; GSA Comments at 15; IntraSpan Comments at 8; Joint Commenters Comments at 49-50; NorthPoint Comments at 13-14; RCN Comments at 16.

[66] Rhythms Comments at 29.

[67] Rhythms Comments at 32-33, *citing Qwest Communications Announces Landmark Initiative to Open Local Communications Market*, <http://www.quest.com/ home.html>.

[68] Qwest Comments at 16.

[69] Rhythms Comments at 28; Joint Commenters Comments at 44, 68; Metromedia Comments at 20.

C. THE COMMISSION MUST ACT NOW TO ENSURE THAT CLECS CAN COLLOCATE EQUIPMENT, INCLUDING LINE CARDS, AT ILEC RTS.

1. Commission Rules Must Ensure Full and Equal CLEC Access to the RT.

The Commission must ensure that CLECs have the ability to collocate at the ILEC remote terminals ("RTs") on terms and conditions that are just and reasonable.[70] The Commission's rules already require ILECs to permit collocation at the remote terminal.[71] However, numerous CLECs comment that further Commission action is necessary to ensure that remote terminal collocation rules ensure nondiscriminatory access.[72]

Specifically, Rhythms and other CLECs note that the Commission's remote terminal collocation rules must permit collocation of equipment on a rack basis, on less than a rack basis, and commingled with other CLEC or ILEC equipment.[73] To ensure that CLECs have sufficient information to determine what equipment to place in an remote terminal, Commission rules should require ILECs to provide crucial information on their remote terminals, including how many and where remote terminals are deployed, the amount of space in the remote terminal and the equipment the ILEC has deployed, or is planning to deploy, in the remote terminal.[74] Finally, as Rhythms and others observe, it is also crucially important that CLECs be able to place their line cards in the remote terminal DLC chassis.[75]

---

[70] Rhythms Comments at 44; CTSI Comments at 23; Focal Comments at 25; Joint Commenters Comments at 67-69; WorldCom Comments at 2.

[71] 47 U.S.C. § 251(c)(6); 47 C.F.R. § 51.321.

[72] Rhythms Comments at 44; Joint Commenters Comments at 68; RCN Comments at 21; Telergy Comments at 40, 42; DSLNet Comments at 47-48; Mpower Comments at 36; CTSI Comments at 39.

[73] Rhythms Comments at 38-39; RICA Comments at 5.

[74] Rhythms Comments at 58-60; Sprint Comments at 21; Mpower Comments at 39.

[75] Rhythms Comments at 19; Mpower Comments at 33, 37; DSLNet Comments at 45; Telergy Comments at 38; Sprint Comments at 8.

2. *The Record Supports a Rule that Would Allow CLECs to Place Their Own Line Cards in the DLC.*

Numerous commenters support Commission rules that would enable CLECs to own and place line cards in next generation digital loop carrier systems.[76] As these commenters point out, without the ability to place their own line card equipment in the DLC chassis, CLECs will be unable to effectively compete and consumers will lose a significant benefit of competition: service differentiation.[77] Thus, given the changes taking place in loop plant technology and architecture, the ability to place line cards in the DLC will in large part determine whether the facilities-based competition envisioned by the Act will materialize.[78]

These concerns are not merely theoretical. As some CLECs specifically note, the inability to place line cards has *already* placed them at a serious competitive disadvantage in Texas, where SBC has deployed its Project Pronto.[79] Accordingly, the Commission must act now to ensure that CLECs have the ability to place their own line cards in the DLC chassis located at the remote terminal.

Without this ability, CLECs may be precluded from provided advanced services at all. First, as the ILECs have long argued, space in the remote terminal is very constrained and may not exist at all.[80] Without the space to place a DSLAM, CLECs would be unable to offer DSL-

---

[76] Rhythms Comments at 12; Conectiv Comments at 33; Focal Comments at 30; Mpower at 46-47; CTSI Comments at 35; DSLNet Comments at 12; Telergy Comments at 47.

[77] Rhythms Comments at 54-55; Focal Comments at 29; Conectiv Comments at 34; Mpower at 46; CTSI Comments at 37; DSLNet Comments at 13.

[78] Rhythms Comments at 55; Fiber Technologies Comments at 7; WorldCom Comments at 2.

[79] Rhythms Joint Declaration at ¶ 105; CTSI Comments at 29; Mpower Comments at 40; Telergy Comments at 44.

[80] Rhythms Comments at 35; Covad Comments at 20, 32; *see* Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (Feb. 15, 2000) ("*SBC February 15 Letter*") at 2-3, 5-6.

based broadband service to customers served behind that DLC.[81] Customers would thus be limited to receiving service *only* from the ILEC-controlled affiliate. Provision of services by a single firm is exactly what Congress meant to end when it passed the Telecommunications Act.[82] The Commission recognizes that with multiple providers—especially facilities-based providers—"consumers will ultimately benefit through lower prices and increased choices in advanced services."[83]

Second, because there is a serious interference potential between ADSL services already deployed from the central office and those deployed from the remote terminal, Commission action is required to preserve competition.[84] Specifically, the Commission rules must ensure both that CLECs have the ability to offer *their own services* from the remote terminal and that the ILEC services deployed from the remote terminal do not interfere with existing CO-based services.[85]

Finally, under Section 256, all carriers and this Commission have an obligation to ensure that ILECs work cooperatively with competitors to ensure continued interconnection and interoperability between and among networks. Section 256 requires the Commission to establish procedures "for the effective and efficient interconnection of public telecommunications

---

[81] Rhythms Comments at 49-50; NorthPoint Comments at 11; CoreCom at 37.

[82] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") ¶¶ 10-15; *See also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999)("*UNE Remand Order*") ¶ 55 ("An absence of multiple providers serving various markets would significantly limit the benefits of competition that would otherwise flow to consumers.")

[83] *Advanced Services Order* ¶ 4.

[84] Rhythms Comments at 89; Rhythms Joint Declaration at 121-124; WorldCom Comments at 14; CompTel at 17; *see* Illinois Commerce Commission, Proposed Implementation of High Frequency Portion of Loop (HFPL) Line Sharing Service, Docket No. 00-0393, Hearing Tr. (John P. Lube, SBC Communications, Inc.) (October 16, 2000) ("Lube Tr.") at 199-355.

[85] Rhythms Comments at 21, 55, 89; Comptel Comments at 17.

networks."[86] Thus, the Commission must ensure that ILECs, vendors and manufacturers adhere to strict principles of openness and interoperability in constructing a competitive network.[87]

The planning and implementation of network interoperability—including specifically DLC line card interoperability—can be accomplished through industry forums and standards groups that operate under the direct and watchful eye of the Commission. Commission participation is not only specifically authorized by Section 256, but absolutely essential to ensure that the goals of Section 256 are fully and faithfully discharged by the industry groups, given the significant imbalance of power between the ILEC network owners and the CLECs.

Accordingly, the Commission should order the ILECs to immediately permit CLECs to own and place line cards in compatible DLC systems. Initially, CLECs should be permitted to place the DLC vendor's cards in the chassis. For instance, Rhythms would be permitted to place an Alcatel ADLU card in the corresponding Alcatel DLC system at the remote terminal. The Commission, by Section 256, however, should also order the industry to immediately begin work on standards and protocols that will achieve full interoperability.

This industry interoperability effort can be accomplished in several steps. In Step 1, CLECs should be permitted to use the same Alcatel cards that SBC uses. Simultaneously, in Step 2, CLECs could place Alcatel cards customized for their use, *e.g.* an Alcatel SDSL card. In a separate, parallel Step 3, the industry could develop and CLECs could deploy plug compatible cards. The industry should be directed to release information on plug compatibility necessary for competing vendors to design cards to place in existing system. To accomplish this step, manufacturers must release data on form factors, pin configurations, power requirements and

---

[86] 47 U.S.C. § 256(b)(1).

[87] Rhythms Comments at 75.

heat dissipation, operating system interface, and access to ATM element manager protocols. Finally, in Step 4, industry participants should be directed to develop standards for full interoperability, such as exists in the personal computing market.

3. *Monopolist's Arguments Are Not Persuasive Because Line Cards Are Equipment Necessary for Interconnection or Access to UNEs.*

The opposition to CLEC placement of line cards by ILECs and their manufacturers should be seen as the effort by the incumbents to preserve and extend the self-serving monopoly position they seek to enshrine in a Commission rule by granting themselves immunity from the Telecommunications Act in any new network architecture or technology.[88] The Commission must recognize that a failure to require ILECs to allow CLECs to own and place line cards at the remote terminal locks in a monopoly, not only for the ILECs but also for the ILEC DLC vendors; having locked up contracts with the ILECs, vendors can preclude competitive provision of the line cards by preventing CLEC access to the DLC.[89] Thus, it is telling that Alcatel now claims that principles of interoperability must be ignored to preserve their "proprietary" technology.[90] Before they acquired Litespan they worked cooperatively with this "other vendor" to develop interoperable technology.[91]

Contrary to the present claims of these monopolists, line cards are equipment within the statutory meaning.[92] SBC, echoed now by other ILECs, urges this Commission to reject CLEC requests for placement of line cards because, in a unique turn-about, it contends such cards are

---

[88] BellSouth Comments at 6; SBC Comments at 16; Verizon Comments at 8; Alcatel Comments at 15.

[89] Rhythms Comments at 73-74; Cisco Comments at 3.

[90] Alcatel Comments at 15.

[91] Rhythms Comments at 23.

not "equipment."[93] Yet, in its filings in connection with its Project Pronto waiver request, SBC recognized that line cards are equipment,[94] as was also the case in the Commission's *SBC Pronto Order*.[95]

Moreover, the record makes it clear that line cards are necessary for interconnection and UNE access.[96] Line cards enable CLECs to interconnect with the ILEC network at a technically feasible point.[97] Likewise, the line card is the equipment used to access unbundled network elements, should a CLEC elect to obtain subloop elements (as authorized under the Commission's rules and discussed more fully below) at the remote terminal.[98] Finally, the ability to place and configure line cards is consistent with the Commission's rules that allow a CLEC to use all the features, functions and capabilities of the unbundled loop, which runs from the end user to the central office.[99]

SBC's stand-alone functionality analysis—that because the card does not function on a stand alone basis but in concert with the DLC system—is inappropriate.[100] First, as explained

---

[92] Conectiv Comments at 28; Focal Communications Comments at 14; Sprint Comments at 8; WorldCom Comments at 8-10.

[93] SBC Comments at 16; *see also* BellSouth Comments at 6, n. 16; Verizon Comments at 8.

[94] Reply Comments of SBC Communications on Application for Consent to Transfer of Control of Licenses and Section 214 Control of Licenses and Section 214 Authorizations from Ameritech Corporation Transferor to SBC Inc. Transferee, CC Docket No. 98-141 (March 10, 2000) ("SBC Pronto Reply Comments") at 2, 5 .

[95] Applications of Ameritech Corp., Transferor, and SBC Communications, Inc. Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, ASD File No. 99-49, *Second Memorandum Opinion and Order* (rel. Sept. 8, 2000)("*SBC Project Pronto Order*").

[96] Rhythms Comments at 19, 53; Mpower Comments at 33; DSLNet Comments at 45; Telergy Comments at 38; WorldCom Comments at 7.

[97] Rhythms Comments at 19.

[98] Rhythms Comments at 19; CoreCom Comments at 37.

[99] Rhythms Comments at 76; Lube Tr. at 331-335.

[100] *See* Lube Tr. at 331-335.

previously, the appropriate approach will ascertain whether the functions of particular equipment are necessary for interconnection or access to UNEs, which the functions of line card are. Second, nothing in the language of the Act, this Commission's rules or any other authority, suggests that the only equipment that CLECs may use when providing services in conjunction with the ILEC network is equipment with "stand alone" functions.[101] Indeed, many components of the network deployed or used by CLECs do not provide "stand-alone" functions.

4. It Is Technically Feasible For CLECs to Own and Place Line Cards in the DLC System.

ILECs and their manufacturers incorrectly imply that it is not technically feasible for CLECs to own and place their own line cards. But, SBC specifically noted that it was possible in its filing on Project Pronto.[102] Citing the old refrain of "administrative difficulty," SBC merely preferred to have the ILEC own the cards.[103] Accordingly, the Commission cannot properly conclude that it is not technically feasible to place line cards in the DLC and should not let a mere claim of administrative inconvenience form the basis for excluding facilities-based broadband competition.[104]

Even SBC concedes that collocation of line cards is technically feasible.[105] When asked under oath in Illinois, for example, SBC's representative admitted that the ability to collocate line cards and provide individual subloop elements was a function of cost, not technical feasibility.[106] SBC has argued that because the data and voice traffic would not ride over the

---

[101] *Id.*

[102] SBC Reply Comments at 18-20; Lube Tr. at 338.

[103] *Id.*

[104] Rhythms Comments at 19; Comptel Comments at 12; NorthPoint Comments at 28.

[105] Lube Tr. at 331-338.

[106] Lube Tr. at 338-348.

same fiber at least as the network is conceived by SBC, CLECs are not entitled to obtain the fiber feeder for transmission of data traffic.[107] When this position was explored in greater detail, however, SBC admitted that the predominant Alcatel DLCs being deployed throughout the SBC territory—the Litespan 2012 and the Litespan 2000—could be configured to enable CLECs to share the fiber facility.[108]

D. THE RECORD SUPPORT COMMISSION ESTABLISHMENT OF NATIONAL COLLOCATION GUIDELINES.

1. The Commission Should Establish National Collocation Interval Guidelines that Reflect the Work Involved in Provisioning Various Collocation Arrangements.

The record provides broad support for Commission adoption of national provisioning intervals for different types of collocation arrangements that reflect the actual provisioning work required.[109] More specifically, the record supports Commission adoption of significantly shorter collocation intervals than the national provisioning interval of 90 calendar days established by the Commission for caged collocation.[110] As Corecomm points out, "the work required for an ILEC to provision caged collocation is much more extensive than the work required to provision other forms of collocation, and thus that shorter intervals are appropriate in the latter case."[111]

ILEC protests against national collocation provisioning intervals are unpersuasive. At this juncture, ILEC experience with provisioning the different types of collocation arrangements

---

[107] Lube Tr. at 305-309.

[108] *Id.*

[109] Joint Commenters Comments at 55, 58; @Link Comments at 31-32; AT&T Comments at 70; Conectiv Comments at 23; Corecomm Comments at 32; CTSI Comments at 21; DSLNet Comments at 44; Mpower Comments at 32; NorthPoint Comments at 22; RCN Comments at 18; RICA Comments at 6; Rhythms Comments at 62-66; Sprint Comments at 27.

[110] 47 C.F.R. § 51.323(l).

[111] Corecomm Comments at 57.

should mean that they require less time to provision such arrangements.[112] Instead, ILECs proffer well-worn—and well-worn out—excuses, such as full overhead racking, faulty cageless orders, additional power requirements and lack of resources that cannot justify Commission inaction.[113] Rather, this ILEC litany only underscores the *need* for national provisioning guidelines that will be an antidote to this continued pattern of ILEC restrictions.

For example, the record reflects broad concern with the ILEC practice of applying the full collocation interval to every subsequent CLEC request for a change in its collocation arrangement.[114] As a result of this ILEC practice, CLECs uniformly advocate substantially shorter intervals for such collocation upgrades or changes. The appropriate interval will reflect only the time needed for the ILEC to perform any requisite provisioning tasks.[115] Where no work is required by the ILEC, the interval should be zero days.[116]

Verizon turns this principle on its head by asserting that "setting the same interval for new collocation requests and augments will not harm collocators, because collocation arrangements can, and should, be turned over to the customer as soon as they are finished, regardless of the applicable interval."[117] The deficiency with Verizon's logic is that it permits an ILEC to wait until the 90th day to perform even the most minimal task, not to mention it is almost unheard of for CLECs to be notified of ILEC completion in less than the full interval. CLECs

---

[112] Rhythms Comments at 65; Corecomm Comments at 21; Mpower Comments at 32; CTSI Comments at 21; DSLNet at 44.

[113] *See, e.g.,* SBC Comments at 43-45, 47; Verizon Comments at 21-22.

[114] @Link Comments at 32; AT&T Comments at 71; Corecomm Comments at 32; Covad Comments at 38-39; DSLNet Comments at 60; NorthPoint Comments at 22; Rhythms Comments at 65.

[115] @Link Comments at 32; AT&T Comments at 71; Corecomm Comments at 32; Covad Comments at 38-39; DSLNet Comments at 60; NorthPoint Comments at 22; Rhythms Comments at 65.

[116] Rhythms Comments at 64-65.

[117] Verizon Comments at 23.

are also unable to effectively plant deployment because of the uncertainty over whether the ILEC will complete its provisioning of a task requiring very little, if any, time on day 1, day 30 or day 90. Because the ILEC has little, if any, incentive to provision CLEC collocation requests expeditiously, without national benchmarks tied to the actual work effort, there is little guarantee that CLECs (other than ILEC-affiliated CLECs) will ever receive their collocation work within appropriate, shorter timeframes.

Moreover, under the ILECs' proposal they will be able to report all collocation provisioning within the often absurd caged interval as "timely." Not only does this enable the ILEC to mask discriminatory provisioning practices, but it prevents regulators from gauging the efficiency of ILEC collocation performance to determine, among other things, Section 271 compliance.

For these reasons, Rhythms urges the Commission to adopt the collocation intervals set forth in its opening comments.[118] Specifically, the Commission should order the ILECs to comply with the following maximum intervals:

Caged Physical Collocation (including shared):	60 calendar days from receipt of application.
Cageless Collocation:	30 calendar days from receipt of application.
Adjacent Collocation:	30 calendar days from receipt of application.
Virtual Collocation:	30 calendar days from receipt of application.
Remote Terminal Collocation:	30 calendar days from receipt of application.
ILEC Modifications Made:	45 calendar days from receipt of application.
CLEC Modification Made:	0 days.

2. The Commission Must Establish National Standards For Space Reservation.

The record now before the Commission supports establishment of national space reservation rules.[119] National space reservation requirements will provide an additional

[118] Rhythms Comments at 62-66.

assurance that ILECs will use the scarce central office space effectively to maximize competitive collocation.[120] Thus, NorthPoint concludes that a national space reservation policy would "prevent ILECs from impeding competition and guarantee that they meet their obligation to offer reasonably and nondiscriminatory collocation."[121]

The ILECs, however, argue that the Commission should defer to them to set space reservation policies on a case-by-case basis.[122] If required to adhere to national standards, the ILECs propose lengthy reservation periods that would allow the incumbents to hoard space within the central office.[123] RCN aptly counters, however, that "there is simply no basis for the excessive time periods sought by ILECs to reserve space."[124] In setting policies, these ILEC demands "must be balanced against the needs of competitors to gain access to valuable central office space, and against the interest of the Commission in ensuring that the CLECs have an opportunity to compete."[125] The best way to ensure that the balancing is uniformly maintained is through a national space reservation policy that is nondiscriminatory and reasonable in its application to all carriers.

---

[119] Joint Commenters Comments at 59; @Link Comments at iii; AT&T Comments at 71; Corecomm Comments at 61; Covad Comments at 20; CTSI Comments at 49; DSLNet Comments at 51; Mpower Comments at 63; NorthPoint Comments at 23; RCN Comments at 26; Sprint Comments at 33; Telergy Comments at 60.

[120] Rhythms Comments at 37; Corecomm Comments at 61; DSLNet Comments at 51; Joint Commenters Comments at 59; Mpower Comments at 63; NorthPoint Comments at 23; RCN Comments at 26; Telergy Comments at 60.

[121] NorthPoint Comments at 23.

[122] BellSouth Comments at 23; SBC Comments at 49; Verizon Comments at 32.

[123] BellSouth Comments at 23; SBC Comments at 49; Verizon Comments at 32.

[124] RCN Comments at 29.

[125] Joint Commenters Comments at 59-60. Several commenters also recognize that "[i]n determining what is an appropriate time for space reservation, one must determine what is the time period that best reflects, and balances, the need of ILECs to plan their networks, with the need of CLECs to collocate their equipment." Corecomm Comments at 63; DSLNet Comments at 52; Mpower Comments at 64.

3. *The Commission Should Preclude ILECs from Requiring CLECs to Collocate in Separate, Isolated Space.*

Commenters agree with Rhythms that allowing ILECs to impose arbitrary separation and segregation requirements on collocating CLECs inefficiently utilizes the limited space. In addition, these requirements may needlessly preclude competitors from collocating in some important ILEC premises that are near exhaust.[126] Specifically, separation and segregation requirements are "not only *silly*,"[127] but also "increase the costs incurred by CLECs to collocate,"[128] "create[ ] clear barriers to entry,"[129] extend the length of loops carrying distance-sensitive technologies,[130] initiate the "ghettoization of CLEC equipment,"[131] "frustrate competition,"[132] "lengthen collocation intervals,"[133] "reduce[] the universe of space available for CLEC collocation,"[134] not to mention "violate the Commission's existing—and not disturbed by the court—security rules."[135] Despite these reasons that support commingling of CLEC and ILEC equipment, the ILECs misleadingly argue that their security concerns justify relegating

---

[126] Joint Commenters Comments at 39; Conectiv Comments at 22; Corecomm Comments at 31; Covad Comments at 32; CTSI Comments at 18-19; DSLNet Comments at 41-42; Mpower Comments at 30; NorthPoint Comments at 21; RICA Comments at 5; RCN Comments at 16-17; Telergy Comments at 36.

[127] Covad Comments at 35.

[128] Conectiv Comments at 22; *see also* Joint Commenters Comments at 46; Covad Comments at 35; CTSI Comments at 19; RCN Comments at 17.

[129] RCN Comments at 17; *see also* Conectiv Comments at 22; Corecomm Comments at 31; Covad Comments at 35; CTSI Comments at 19.

[130] Covad Comments at 33.

[131] Conectiv Comments at 22; *see also* RCN Comments at 17.

[132] Joint Commenters Comments at 46.

[133] Covad Comments at 34.

[134] Corecomm Comments at 31; *see also* Joint Commenters Comments at 46; Conectiv Comments at 22; Covad Comments at 35; CTSI Comments at 19; RICA Comments at 5; RCN Comments at 17.

[135] Covad Comments at 34.

CLECs to virtual collocation, regardless of the technological advancements made in the past four years.

The ILECs attempt to justify their segregation and separation policies by referring to them as necessary security measures.[136] The Commission, however, does not view segregation or separation as reasonable security measures.[137] Moreover, the ILECs never explain how existing security measures—which make optimal usage of the space available in the central office and deemed reasonable by the Commission—are inadequate. As Covad reminds us, "[s]ince the time of the AT&T divestiture, AT&T and RBOC equipment in central offices have often been separated only by painted lines on the floor".[138]

In light of the alternatives, keeping competitors out of ILEC premises could never be a reasonable measure.[139] For example, SBC takes the position that because it cannot separate or segregate the CLECs' equipment at remote terminal locations, CLECs cannot collocate at the remote terminals.[140] Section 251(c)(6) requires ILECs to allow CLECs to physically collocate equipment, absent technical infeasibility or space exhaustion. ILECs' inability to use their choice of security measures does not make collocation technically infeasible. For these reasons,

---

[136] BellSouth Comments at 12; SBC Comments at 29, 31-33; Verizon Comments at 20.

[137] *Advanced Services Order* ¶¶ 46, 48.

[138] Covad Comments at 36.

[139] *See* Joint Commenters Comments *citing* 205 F.3d at 425.

[140] SBC Comments at 30. Additionally, SBC denounces the rebuttable presumption for the technical feasibility of commingling equipment raised by its antithetical position to allow RT collocation on a rack-by-rack basis. *see* SBC Comments at 35.

separation and segregation requirements cannot be imposed as security measures, nor can CLECs be required to pay for such measures.[141]

Finally, the ILECs defend their segregation and separation policies on the grounds that when these policies cause premature space exhaustion CLECs always have the option of virtual collocation.[142] Not only is virtual collocation an inferior alternative for establishing competition in the local telecommunications market,[143] the ILECs base this argument on an inaccurate reading of the 1996 Act. Indeed, what the ILECs refuse to acknowledge in their comments is that every operational or technical issue raised against commingling of equipment[144] exists in identical form for virtual collocation.[145] Thus, virtual collocation, while remaining an option for new entrants, prevents competition without alleviating any of the ILECs' unsubstantiated operational or technical concerns. With commingling, assuming technical feasibility, physical collocation should always be available, except in locations where genuine space exhaustion exists. Rhythms, therefore, urges the Commission to clarify its justifications for prohibiting segregation and separation of CLEC equipment and reimplement those prohibitions.

---

[141] SBC argues that CLECs must pay for the measures taken to separate and segregate the CLEC equipment, such as construction of walls or separate entrances or ILEC cages. SBC Comments at 29. This position is illogical, not to mention inconsistent with the Commission's *Advanced Services Order*. *Advanced Services Order* ¶ 48. As Sprint notes, "such construction would be a measure taken by the ILEC solely for its own convenience, and there is no reason to force the collocating carriers to bear the costs. Otherwise, the ILECs would have an incentive, other things being equal, to choose collocation space that would require such construction, simply to increase artificially the CLECs' costs of collocation." Sprint Comments at 15.

[142] BellSouth Comments at 11; SBC Comments at 35; Sprint Comments at 19; Verizon Comments at 19.

[143] Rhythms Comments at 40-41.

[144] SBC Comments at 31; Verizon Comments at 20.

[145] Rhythms Comments at 40-41.

4. *CLECs and ILECs Should Both Be Involved in Determining Where Collocated Equipment Will Be Placed in the ILEC Premises.*

CLEC commenters confirm Rhythms' position that CLECs are in the best suited to select the appropriate space for their collocation equipment, because competitors have the greatest insight into how to efficiently and effectively utilize that space for interconnection or access to UNEs, as well as the incentive to promote efficient collocation.[146] Particularly, "the ILECs should not be able to select space for collocation in such a way as to reduce the total amount of space available for collocation,"[147] because "space assignment policies, if left to the ILECs, result in no-space central office and multi-hundred thousand dollar collocation construction charges."[148] Therefore, "the best way to ensure that collocation space is offered to competitors in a just reasonable and nondiscriminatory manner is to have competitors choose their own space."[149]

The ILECs, however, oppose allowing CLECs any control or input into where in the ILEC premises their equipment is collocated.[150] The ILECs contend that their statutory duty to allocate collocation space to CLECs on a just, reasonable and nondiscriminatory basis provides a sufficient guarantee of nondiscriminatory, efficient collocation.[151] But the existence of the duty alone is not justification for ILECs complete control over the choice of the location of the CLEC equipment in the ILEC premises. If only we lived in the world that the ILECs seem to imagine.

---

[146] Joint Commenters Comments at 33; Covad Comments at 32.

[147] Sprint Comments at 15.

[148] Covad Comments at 32.

[149] Joint Commenters Comments at 33.

[150] BellSouth Comments at 9-10; Qwest Comments at 23-24; SBC Comments at 28; Verizon Comments at 14-15.

[151] BellSouth Comments at 9-10; SBC Comments at 28; Verizon Comments at 14-15.

In the real world, the Commission must adopt safeguards to ensure that ILECs do not require CLECs to place their equipment in locations that unnecessarily increase the length of the loops or the cost of space conditioning or cabling.

Under these safeguards, CLECs must have access to information that shows what space is available, so they may specify their preference within the available space. Absent a demonstration of good cause that use of certain space is not technically feasible, ILECs should be required to honor CLECs' preferences. Though the ILECs argue that they must maintain managerial control over the structures that they own, Rhythms' proposal does not require that the ILECs relinquish any of their responsibility in managing the ILEC premises.[152] The Commission, therefore, should ensure against premature space exhaustion by allowing CLECs to direct the process of assignment of space for their collocation equipment.

III. COMMISSION ACTION IS ESSENTIAL TO ENSURE THAT ILECS DO NOT PRECLUDE COMPETITION THROUGH NETWORK ARCHITECTURE CHANGES.

A. COMMISSION ACTION IS REQUIRED TO ENSURE THAT CLECS ARE INVOLVED IN THE PLANNING, DESIGN AND IMPLEMENTATION OF NETWORK ARCHITECTURE CHANGES.

Commission action will ensure that the competitive strides made under the Telecommunications Act are not foreclosed and reversed by anticompetitive implementation of network topologies that exclude competitors. ILECs are deploying technologies in their networks that they are arguing specifically preclude the competitive use of the local networks mandated by the Act and this Commission's rules. Such actions seek to remonopolize the local broadband network and therefore cannot be tolerated in the current statutory and regulatory regime.

---

[152] BellSouth Comments at 9; SBC Comments at 28; Verizon Comments at 14.